

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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**In re MBNA Corp. ERISA Litigation**

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) **Master Docket No. 05-429 (GMS)**  
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**PLAINTIFFS' MOTION FOR LEAVE TO FILE THEIR SECOND  
AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS  
OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT**

Pursuant to Rule 15 of the Federal Rules of Civil Procedure and the Court's Scheduling Order dated July 12, 2007 [Docket No. 49], plaintiffs hereby move the Court to amend the Amended Class Action Complaint For Violations Of The Employee Retirement Income Security Act to add four individuals who served on MBNA's Pension and 401(k) Plan Committee (the "Plan Committee") during some or all of the alleged Class Period.<sup>1</sup>

1. Under Rule 15 of the Federal Rules of Civil Procedure, leave to amend a complaint "should be freely given when justice so requires . . . . This liberal amendment philosophy limits the district court's discretion to deny leave to amend . . . [I]n the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, [and/or] futility of amendment . . . the leave sought should, as the rule requires, be freely given." *Martek*

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<sup>1</sup> Pursuant to D. Del. L.R. 15.1, attached as Exhibit A, is a signed version of the Second Amended Class Action Complaint For Violations Of The Employee Retirement Income Security Act. Attached as Exhibit B is a "blackline" of that pleading indicating the respects in which it differs from the pleading that it amends.

*Biosciences Corp. v. Nutrinova Inc.*, No. 03-896 (GMS), 2005 U.S. Dist. LEXIS 14315, at \*5-6 (D. Del. 2005) (internal citations omitted).

2. Plaintiffs' amendment is timely. Specifically, it complies with paragraph 2 of the Court's Scheduling Order, which states that "all motions to join other parties and amend the pleadings shall be filed on or before October 5, 2007."

3. Defendants will not be prejudiced by plaintiffs' amendment.

4. Plaintiffs' amendment would not be futile. It merely adds as defendants the following four individuals who served on the Plan Committee during all or part of the Class Period:

- (i) John Cochran: Defendants recently provided information during the course of discovery showing that Mr. Cochran was a Plan Committee member during all or part of the Class Period.
- (ii) M. Scott Kaufman: Defendants recently provided information through discovery showing Mr. Kaufman was a Plan Committee member during all or part of the Class Period.
- (iii) Michelle Shepherd: Defendants recently provided information through discovery showing that Ms. Shepherd was a Plan Committee member during all or part of the Class Period.
- (iv) Vernon Wright: Defendants recently provided information in discovery showing that Mr. Wright was a Plan Committee member during all or part of the Class Period.

The Court has previously denied defendants' motion to dismiss the claims alleged against Plan Committee members Kenneth F. Boehl, Charles C. Krulak, Terri C. Murphy, John W. Scheflen,

Kenneth A. Vecchione, Lance L. Weaver, and Thomas D. Wren, each of whom served in such capacity during all or part of the Class Period [Docket No. 29].

For the above stated reasons, plaintiffs respectfully submit that their motion to amend the complaint should be granted.

Dated: October 5, 2007

**ROSENTHAL, MONHAIT  
& GODDESS, P.A.**

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*Members of the Executive Committee  
for the Putative Class*

**RULE 7.1.1 CERTIFICATE**

I hereby certify that on this October 5, 2007, I asked that defendants' counsel agree to plaintiffs' amendment of their amended complaint. Defendants' counsel responded that he was not in a position to consent at this time.

  
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Michael Jaffe